

## **Critical Analysis of Arbitration Method Used in the Construction Industry in Sri Lanka**

M. Nihaj<sup>1</sup> & N. G. Gunawardena<sup>2</sup>

Disagreement among contracting parties has a rich tradition in the construction industry, which induces of creating and experimenting with alternatives to litigation. Alternative Dispute Resolution (ADR) methods such as adjudication, mediation, negotiation and arbitration, in the construction industry have gained numerous positive impacts during the recent years in Sri Lanka. Arbitration is seen as the final mode of Alternative Dispute Resolution. Construction disputes become more technical intensive, multifaceted and multinationally interested than the other commercial disputes; construction disputes need the enforceable and flexible Alternative Dispute Resolution (ADR) such as Arbitration to resolve disputes efficiently. The Arbitration Act of Sri Lanka No. 11 of 1995 provides a legislative framework for the effective conduct of arbitration's procedure. However, the use of the Arbitration in the private and public sectors has not been efficiently apparent, probably due to several practical constraints. This study is the first endeavor to critically thr assess effectiveness and the problems of arbitration after two decades enacting the Arbitration Law no 11, 1995. The objectives of the study were to examine the dispute resolution techniques specially arbitration used in the Sri Lankan contracting practices, to assess the effectiveness of the Arbitration Law no 11 of 1995 and its application by measuring the performance evaluation of Critical Success Factors (CSF) of the arbitration in the construction industry, to identify the practical constrain, customs and their severity by which the effectiveness of arbitration is being aggravated and to identify remedial measures through the discussion with leading key players by identifying very accurate problem of the above quantifying study. These were examined by undertaking a literature review of the Sri Lankan and international construction industry with a structured questionnaire and private interviews with leading big players in the industry. This paper's findings were quantity study of collecting the professional perception of the arbitration found in the Sri Lankan contracting practices, its adequacy, competence and practical effectiveness

to cope with a number of complex disputes and claims that may occur due to the increased growth in construction which was unprecedented due to the end of the civil war. The results of the study indicated to what extent Arbitration practices in Sri Lanka practically fulfilled the critical success attributes of the Arbitration. Causative of the ineffectiveness and Severity of the practical constrains also were identified, evaluated and ranked. Remedial measures also were collected from leading professional, in improving arbitration methods which were the major output of this study. Speed, cost, creative remedies and flexibility were the successful attributes of arbitration that were found as were being mostly violated in practical means.

**Keywords:** Alternative Dispute Resolution (ADR); Arbitration; Critical attributes; Construction Industry; Critical Success Factors (CSF)